

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by Pacific Bell Telephone Company
d/b/a SBC California (U 1001 C) for Arbitration
of an Interconnection Agreement with MCImetro
Access Transmission Services LLC (U 5253 C)
Pursuant to Section 252(b) of the
Telecommunications Act of 1996.

Application 05-05-027
(Filed May 26, 2005)

**ADMINISTRATIVE LAW JUDGE'S AND ARBITRATOR'S RULING
GRANTING IN PART JOINT MOTION TO DEFER ISSUANCE OF DRAFT
ARBITRATOR'S REPORT AND EXTEND REMAINING SCHEDULE**

On January 13, 2006, parties filed a joint motion. Parties request deferral of issuance of the Draft Arbitrator's Report (DAR) for a period of 60 days, with concurrent extension of the remaining schedule. Parties assert that this will allow for renewed negotiation, and they will attempt to resolve some or all of the remaining contested issues in this proceeding.

In support, parties state that (a) on November 18, 2005, a merger was consummated between SBC Communications, Inc. and AT&T Corporation Inc., and (b) on January 6, 2006, a merger was consummated between MCI, Inc. and Verizon Communications, Inc. According to parties, it is only since the consummation of both mergers, with Verizon and MCI closing most recently, that parties have had any real opportunity to consider negotiation and settlement of contested issues on behalf of their newly constituted organizations. Parties believe there is substantial likelihood of resolution by agreement of at least some contested issues, if given a meaningful opportunity to negotiate. Parties further agree that:

“it is necessary in order to accommodate this period of renewed negotiation and to promote settlement of issues that the ALJ defer the issuance of a DAR and extend the remainder of the schedule in this proceeding by sixty (60) days.” (Joint Motion, page 3.)

Parties state there is strong public policy supporting the settlement of disputes and the conservation and efficient utilization of party and Commission resources. Parties submit that granting the requested relief would promote settlement, justice and efficiency. Finally, parties expressly agree to extend the time limits set in § 252 of the Telecommunications Act of 1996 for an additional 60 days to accommodate this request.

The request is granted in part. Parties do not state a convincing reason why deferral of the DAR is necessary in light of recent mergers. To the contrary, applications for authority to merge were filed in February and April 2005.¹ Both mergers were approved by this Commission on November 18, 2005.² Parties should have requested a delay in the schedule before or during November 2005 (upon approval of each merger) if parties had any reasonable expectation that final consummation of the mergers could realistically affect the outcomes in this arbitration. It is unpersuasive that not until January 6, 2006, was it reasonably concluded by one or both parties that one or both mergers sufficiently affected the proposed outcomes here to justify a delay in the filing of the DAR pending further negotiation.

Nor do parties state a convincing reason why deferral of the DAR is necessary to promote settlement. To the contrary, the reasoning and conclusions

¹ Application (A.) 05-02-027 and A.05-04-020.

² Decision (D.) 05-11-028 and D.05-11-029.

in the DAR offer the potential to help parties reach settlement. For example, the DAR finds middle ground on some issues. If the logic and judgments in the DAR are reasonable, they should assist parties reach agreement.

Filing of the DAR causes no prejudice to parties. The DAR is a draft. Neither party needs to accept any reasoning, conclusion or judgment reached in the DAR if the party is uncomfortable with that outcome, or not otherwise convinced. Moreover, some or all outcomes in the DAR are subject to being modified or reversed based on comments from parties before issuance of the Final Arbitrator's Report (FAR). Even the outcomes in the FAR can be modified or reversed by the Commission based on comments of parties.³ The argument that deferral of the DAR is necessary to promote settlement is not convincing.

Finally, parties fail to show how deferral of the DAR saves resources. The application, response and many pleadings have been filed; hearings have been held; opening and reply briefs have been filed; and the DAR has been prepared. Filing of the DAR requires the use of very few additional resources.

On the other hand, parties convincingly point out that there is strong public policy supporting the settlement of disputes. I have consistently encouraged parties to discuss settlement. Parties are now interested in further settlement negotiations. This should be permitted.

Moreover, deferral of comments on the DAR in order to allow parties time to negotiate will conserve party and Commission resources going forward, and promote efficient utilization of those resources. Parties can focus on negotiation and settlement for 60 days. Parties may then file comments on those limited

³ See, for example, D.01-09-054 in A.01-01-010.

remaining disputed issues, if any, based on the resolutions reached in the DAR. Those comments should be due 10 days after the conclusion of the 60-day negotiation window, as proposed by parties.

IT IS RULED that the January 13, 2006 joint motion to defer issuance of the Draft Arbitrator's Report (DAR) and extend the remaining schedule pending renewed negotiations is granted in part. The DAR is filed concurrently with this ruling. The schedule is otherwise modified as recommended in parties' joint motion. The revised schedule is attached.

Dated January 20, 2006, at San Francisco, California.

/s/ BURTON W. MATTSON

Burton W. Mattson
Administrative Law Judge
Arbitrator

REVISED SCHEDULE
January 20, 2006
A.05-05-027

SBC-CA v. MCIIm Arbitration

Line No.	Item	Date
1	Draft Arbitrator's Report	1/20/06
2	Comments on DAR (+10)	3/30
3	Reply comments on DAR (+5)	4/4
4	Final Arbitrator's Report (+15 from comments)	4/19
5	Interconnection Agreement Filed with Statements (+7)	4/26
6	Proposed Decision	5/10
7	Comments on PD	5/17
8	Reply comments on PD	5/19
9	Commission Decision	5/25 or 6/15

Except for filing of the Draft Arbitrator's Report, the revised schedule is as proposed by parties in their January 13, 2006 Joint Motion regarding extension of the remaining schedule.

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's and Arbitrator's Ruling Granting in Part Joint Motion to Defer Issuance of Draft Arbitrator's Report and Extend Remaining Schedule on all parties of record in this proceeding or their attorneys of record.

Dated January 20, 2006, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

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(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.